

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

GERALD S. SAMUELS, )  
 )  
Plaintiff, )  
 )  
v. ) Civil Action No. 03-150-SLR  
 )  
DETECTIVE CUNNINGHAM, DETECTIVE )  
SIMMONS, DETECTIVE MULLINS, )  
DETECTIVE CHAFFIN, DETECTIVE HALL, )  
and WILMINGTON POLICE DEPARTMENT, )  
 )  
Defendants. )

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Gerald S. Samuels, Sussex Correctional Institution, Georgetown  
Delaware. Pro se.

Rosamaria Tassone, Esquire, City of Wilmington Law Department,  
Wilmington, Delaware. Counsel for Defendants.

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**MEMORANDUM OPINION**

Dated: August 14, 2003  
Wilmington, Delaware

**ROBINSON, Chief Judge**

**I. INTRODUCTION**

On January 30, 2003, pro se plaintiff Gerald S. Samuels filed a civil rights action pursuant to 42 U.S.C. § 1983, asserting that defendants Detective Cunningham ("Cunningham"), Detective Simmons ("Simmons"), Detective Mullins ("Mullins"), Detective Chaffin ("Chaffin"), Detective Hall ("Hall") and the Wilmington Police Department violated his Fourth Amendment rights by using excessive force when they arrested him on November 21, 2001. (D.I. 20) The court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Currently before the court are the defendants' motion to dismiss, plaintiff's motion for leave to file an amended complaint and plaintiff's motion for appointment of counsel. (D.I. 6, 16, 20) For the reasons discussed below, the court shall grant in part and deny in part defendants' motion to dismiss, grant plaintiff's motion to file an amended complaint and deny plaintiff's motion for appointment of counsel.

**II. BACKGROUND<sup>1</sup>**

According to plaintiff, on November 21, 2001, he was standing on the street in Wilmington talking to an individual through the passenger side window of a car. (D.I. 20 at 2) When detectives Cunningham, Simmons, Mullins and Chaffin approached

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<sup>1</sup>As is required under a motion to dismiss pursuant to Rule 12(b)(6), the court gathers the facts solely from plaintiff's amended complaint.

the vehicle, plaintiff began to walk away. (Id.) The detectives inquired into plaintiff's activities. (Id.) As the detectives exited their vehicle, plaintiff attempted to flee on foot while the car and its occupant fled the scene. (Id.) Two of the detectives pursued the vehicle while the other two detectives pursued plaintiff. (Id.) According to plaintiff, "I attempted to run, but both defendants had a firm grasp of my clothing which prevent[ed] my escape. However, I did keep my legs pumping with the attempt to escape to no avail." (Id.) The two detectives pursuing the vehicle were apparently unsuccessful and returned to the scene to assist in subduing plaintiff. (Id.) Plaintiff was forced to the hood of the police vehicle and handcuffed. (Id. at 2-3) At that point, plaintiff alleges that Detective Hall arrived on the scene, ran over to plaintiff and punched him in the ribs. (Id.) Plaintiff alleges that he was transported to the Wilmington Hospital and diagnosed with a fractured rib. (D.I. 21 at 2)

### **III. STANDARD OF REVIEW**

In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the

facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972); Gibbs v. Roman, 116 F.3d 83, 86 n.6 (3d Cir. 1997); Urrutia v. Harrisburg County Police Dep't., 91 F.3d 451, 456 (3d Cir. 1996). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

#### **IV. DISCUSSION**

##### **A. Fourth Amendment Claim**

Plaintiff alleges that defendants' use of excessive force during his arrest was a violation of his Fourth Amendment rights. The Fourth Amendment and its "reasonableness" standard should be used to analyze all claims which allege that law enforcement officers have used excessive force in the course of an arrest. Graham v. Connor, 490 U.S. 386, 395 (1989). The Fourth Amendment's reasonableness standard is "not capable of precise definition or mechanical application." Id. at 396 (quoting Bell

v. Wolfish, 441 U.S. 520, 559 (1979)). The reasonableness test requires careful analysis of the "facts and circumstances of each particular case, including . . . whether the suspect poses an immediate threat to officer safety and whether he is actively resisting arrest or attempting to evade arrest by flight." Id. (citing Tennessee v. Garner, 471 U.S. 1, 8-9 (1985)). Police officers are permitted to use a reasonable amount of force to effect an arrest; the degree of force is dictated by the suspect's behavior. See id.

The reasonableness of force used "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Id. (citing Terry v. Ohio, 392 U.S. 1, 20-22 (1968)). The question to be answered is "whether the officers' actions were 'objectively reasonable' in light of the specific facts and circumstances confronting them [at that particular moment, regardless] of their underlying intent or motivation." Id. at 397 (citing Scott v. United States, 436 U.S. 128, 137-139 (1978)); see also Terry, 392 U.S. at 21. "An officer with evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional." Id.

The court finds that plaintiff has failed to state a claim upon which relief could be granted as to defendants Cunningham,

Simmons, Mullins, Chaffin and the Wilmington Police Department.<sup>2</sup> Plaintiff alleges that Cunningham, Simmons, Mullins and Chaffin failed to intervene to prevent Hall's excessive use of force.<sup>3</sup> Under the facts alleged by plaintiff, these defendants could not have anticipated that Hall would throw a single punch after plaintiff was handcuffed. Furthermore, plaintiff alleges no facts that support a claim against the Wilmington Police Department. Plaintiff's conclusory allegation that the Wilmington Police Department's policies and acts (i.e., failure to train and supervise) violated plaintiff's rights under the Fourth Amendment are wholly insufficient to support his claim.

As to Hall, the court finds that plaintiff's complaint alleges facts to support a case of excessive force. Plaintiff alleges that Hall punched him in the rib after he was handcuffed and had ceased resisting arrest. Officers are permitted to use reasonable force to effect an arrest. Accepting the facts as alleged by plaintiff as true, Hall's use of force after plaintiff was handcuffed cannot be viewed as reasonable.

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<sup>2</sup>The court notes that plaintiff has filed a motion for leave to file an amended complaint. (D.I. 20) Plaintiff's motion is granted. The court has considered defendants' motion to dismiss in light of plaintiff's amended complaint.

<sup>3</sup>Plaintiff does not claim that the force employed by Cunningham, Simmons, Mullins, and Chaffin to place him under arrest was excessive. Because he pled guilty to resisting arrest, such a claim would fail. See generally Nelson v. Jashurek, 109 F.3d 142 (1997). Plaintiff's only claim of excessive force arises from Hall's single punch to his ribs.

## **B. Representation by Counsel**

Plaintiff's motion for representation by counsel is denied without prejudice to renew. Plaintiff, a pro se litigant proceeding in forma pauperis, has no constitutional or statutory right to representation by counsel. See Ray v. Robinson, 640 F.2d 474, 477 (3d Cir. 1981). It is within the court's discretion, however, to seek representation by counsel for plaintiff, but this effort is made only "upon a showing of special circumstances indicating the likelihood of substantial prejudice to [plaintiff] resulting . . . from [plaintiff's] probable inability without such assistance to present the facts and legal issues to the court in a complex but arguably meritorious case." Smith-Bey v. Petsock, 741 F.2d 22, 26 (3d Cir. 1984). Having reviewed plaintiff's complaint, the court finds that plaintiff's allegations are not of such a complex nature that representation by counsel is warranted at this time.

## **V. CONCLUSION**

For the reasons stated, the court shall grant the motion to dismiss as to defendants Cunningham, Simmons, Mullins, Chaffin and the Wilmington Police Department. The court shall deny the motion to dismiss as to defendant Hall. An appropriate order shall issue.

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and WILMINGTON POLICE DEPARTMENT, )  
 )  
Defendants. )

**ORDER**

At Wilmington this 14th day of August, 2003, consistent  
with the memorandum opinion issued this date;

IT IS ORDERED that:

1. Defendants' motion to dismiss (D.I. 16) is granted as  
to defendants Cunningham, Simmons, Mullins, Chaffin and the  
Wilmington Police Department.

2. Defendants' motion to dismiss (D.I. 16) is denied as to  
defendant Hall.

3. Plaintiff's motion for leave to file an amended  
complaint (D.I. 20) is granted.

4. Plaintiff's motion for appointment of counsel (D.I. 6)  
is denied.

Sue L. Robinson  
United States District Judge